

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HOLD THIS, INC.

COMPLAINT

Plaintiff,

Case No. _____

v.

ERIC BAUMAN, BETTER THAN PANTS, LLC,
FUNNY SHIRTS.NET, and SADTREXSHIRT.COM
Defendants.

COMPLAINT

Plaintiff, Hold This, Inc. (“Plaintiff” or the “Company”) hereby files its Complaint against Defendants Eric Bauman (“Bauman”), Better Than Pants, LLC (“Better Than Pants”), Funnyshirts.net (“Funny Shirts”), and SadTRexShirt.com (“Sad-T-Rex”), and for causes of action states as follows:

I. SUMMARY OF ACTION

1. The Company, through its registered trade name Goodie Two Sleeves, and accompanying website and domain name, goodietwosleeves.com, designs, advertises, markets, and sells certain apparel items via the internet. Bauman, via the internet, and in particular by way of the website and domain name BetterThanPants.com, is engaged in the business of advertising, marketing, and selling T-shirts. This is an action for copyright infringement under the United State Copyright Act of 1976, as amended, 17 U.S.C. §§ et seq. (the “Copyright Act”) from

Bauman's unauthorized copying and distribution of one of the Company's copyrighted designs.

II. PARTIES

2. The Company is a California corporation with a principal place of business located at 9400 Lurline Avenue, C, Chatsworth, California 91311.

3. The Company, through its registered trade name Goodie Two Sleeves, Trademark Registration No. 4134773, and accompanying website and domain name, goodietwosleeves.com, designs, advertises, markets, and sells certain apparel items via the internet.

4. Bauman is an individual residing within this District, in Monroe County, New York.

5. Upon information and belief, Bauman, via the internet, and in particular by way of the website and domain name BetterThanPants.com, is engaged in the business of advertising, marketing, and selling T-shirts at 32 East Main Street, Webster, New York 14580.

6. Better Than Pants is a domestic limited liability company with a place of business at 32 East Main Street, Webster, New York 14580 and is engaged in the business of advertising, marketing, and selling T-shirts.

7. Upon information and belief, Funny Shirts is an unincorporated business form and/or the name for a joint venture or trade name between or among Defendants Bauman and Better Than Pants and is engaged in the business of advertising, marketing, and selling T-shirts.

8. Upon information and belief, Sad-T-Rex is an unincorporated business form and/or the name for a joint venture or trade name between or among Defendants Bauman and Better Than Pants and is engaged in the business of advertising, marketing, and selling T-shirts.

III. JURISDICTION AND VENUE

9. This Court has original subject matter jurisdiction over Plaintiff's Copyright Act claim pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b), and 17 U.S.C. § 101, *et seq.*

10. Defendants are subject to personal jurisdiction in this District and venue is proper pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) in that Defendants reside in or may be found in the State of New York and this District, the Defendants have done business in the State of New York, and/or a substantial portion of the unlawful conduct giving rise to this action has occurred and is occurring in this District.

IV. STATEMENT OF FACTS

Plaintiff's Business and Ownership of the "Sad T Rex" Design

11. Hold This, Inc. is a corporation organized under the laws of the State of California in 2007 and designs, advertises, markets, and sells certain apparel items through its registered trade name Goodie Two Sleeves ® ("Goodie Two Sleeves"), and via the internet by way of its accompanying domain name, GoodieTwoSleeves.com. A true and correct copy of the Company's Trademark Registration No. 4134773 as downloaded from the United States Patent and Trademark office website is attached hereto as **Exhibit 1**, and is hereby incorporated

by reference.

12. The Goodie Two Sleeves apparel and licensing brand has been immensely successful and has generated revenue since its inception in excess of Thirty Million USD (\$30,000,000).

13. Of the approximately five thousand (5,000) designs created by Hold This Inc., its “Sad T Rex” design is by far the Company’s most popular. The “Sad T Rex” design was uniquely conceived and created by Gabe Connor for the Company on April 29, 2011.

14. The “Sad T Rex” design has grossed in excess of One Million Five Hundred Thousand USD (\$1,500,000) in sales for the Company and has been seen via the GoodieTwoSleeves.com domain name by millions of consumers.

Hold This Inc.’s Copyright

15. On April 26, 2013 U.S. Copyright Registration No. VA 1-882-368 registered to Hold This, Inc. for a work entitled Sad T Rex GT2339. Plaintiff filed applications for registration in the proper form, paid the required fees, and deposited copies of the foregoing work with the United States Copyright Office, and otherwise has complied with the United States Copyright Law with respect to the foregoing works. As such Plaintiff is entitled to file suit for infringement of these works. A true and correct copy of Hold This, Inc.’s Copyright Registration is attached hereto and is incorporated herein as **Exhibit 2**.

Defendants’ Infringement

16. On July 4, 2011, the Company first sold the “Sad T Rex” design as a

button to Hot Topic, Inc.

17. Hot Topic, Inc. is a publicly traded company on the NASDAQ stock exchange under the symbol HOTT and offers brand-related apparel and accessories, licensed merchandise, and fashion apparel accessories at more than six hundred (600) retail stores and by way of its website and domain name hottopic.com (“Hot Topic”).

18. The “Sad T Rex” design button available for sale on Hot Topic was posted to the reddit.com website and domain name on November 9, 2011 and was seen by approximately 1.1 million people.

19. Reddit is an entertainment, social networking service, and news website where registered community members can submit content, such as text posts or direct links. In the month immediately preceding October 2014, Reddit had 174,088,361 unique visitors.

20. Upon information and belief, Bauman viewed the “Sad T Rex” design button on either reddit.com and/or the hottopic.com websites.

21. Upon information and belief, Bauman and Better Than Pants, via the internet, and in particular by way of the website and domain name BetterThanPants.com, by way of the website and domain name FunnyShirts.net, and by way of the website and domain name SadTRexShirt.net, is engaged in the business of advertising, marketing, and selling T-shirts.

22. Beginning on November 18, 2011, Bauman and Better Than Pants, via the internet, and in particular by way of the website and domain name

BetterThanPants.com, by way of the website and domain name FunnyShirts.net, and by way of the website and domain name SadTRexShirt.net, began selling T-shirts with the “Sad T Rex” design illustrated on the front of such T shirts.

23. On January 31, 2012 Bauman, via the blog section of the BetterThanPants.com website published the fact that “Sad T Rex” was one of its top sellers. See **Exhibit 3** which is a true and correct copy of the Bauman’s blog post on the BetterThanPants.com website.

24. By letter, dated February 6, 2012, the Company notified Bauman in writing of his infringement of Plaintiff’s copyright, and demanded Bauman immediately cease and desist from same. A true and correct copy of Plaintiff’s “cease and desist” demand letter is attached hereto as **Exhibit 4**.

25. Upon information and belief, Bauman removed the infringing material from the BetterThanPants.com website in late February 2012 but shortly thereafter began again selling infringing material via BetterThanPants.com website and other affiliated websites owned by Bauman.

26. Upon information and belief, by way of an additional blog post on the BetterThanPants.com website, dated May 17, 2012, Bauman disclosed again that the “Sad T Rex” design T shirts were a “best seller.”

27. Upon information and belief, the BetterThanPants.com Facebook page, dated November 12, 2012, disclosed that the “Sad T Rex” design received 1,069 “Like” votes, was shared on forty (40) occasions, and had generated eighteen (18) comments.

28. Upon information and belief, Bauman purchased the associated domain name and created the corresponding website entitled SadTRexShirt.com on September 9, 2013.

29. Upon information and belief, after September 9, 2013 Bauman began distributing and selling merchandise with the “Sad T Rex” design through the SadTRexShirt.com website and through internet traffic that was forwarded from the SadTRexShirt.com website to the BetterThanPants.com website which URL is still forwarding to BetterThanPants.com website to this day.

30. Beginning in February 2012, and continuing throughout 2013, the Company made repeated attempts to reach an amicable resolution of Bauman’s copyright infringement.

31. By letter, dated December 9, 2013, the Company’s outside counsel notified Bauman and Better Than Pants in writing of their continued infringement of Plaintiff’s copyright, and demanded Bauman immediately cease and desist from same. A true and correct copy of Plaintiff’s “cease and desist” demand letter is attached hereto as **Exhibit 5**.

32. By letter, dated January 8, 2014, the Company’s outside counsel notified Bauman and Better Than Pants again, in writing of their continued infringement of Plaintiff’s copyright, demanded Bauman immediately cease and desist from same, and extended a licensing offer by the Company to allow Bauman and Better Than Pants to sell off any remaining inventory. A true and correct copy of Plaintiff’s “cease and desist” demand letter is attached hereto as **Exhibit 6**.

33. By e-mail, dated January 28, 2014, Bauman replied to the Company's "cease and desist" demands, and agreed to remove "the infringing design." See **Exhibit 7** which is a true and correct copy of the e-mail sent by Bauman to the Company.

34. Upon information and belief, on April 15, 2014 the Company also discovered that Bauman was also distributing and selling merchandise with the "Sad T Rex" design through the FunnyShirts.net website, another domain name and associated website owned by Bauman.

35. On April 28, 2014, the Company successfully purchased infringing material through the FunnyShirts.net website.

36. On May 9, 2014, the Company discovered that infringing material was available for sale on the Amazon Marketplace webpage, and upon information and belief such infringing material is still available for sale today.

37. Upon information and belief, despite Bauman's written assurance to remove the infringing design, Plaintiff has discovered that Bauman in fact is continuing his infringing activities through the BetterThanPants.com website, the FunnyShirts.net website, the SadTRexShirt.com website, or other affiliated websites owned by Bauman from time to time.

38. On information and belief, Bauman profited from his unauthorized use of Plaintiff's "Sad T Rex" copyright design.

39. Bauman's blatant disregard for Plaintiff's rights and efforts to communicate with Bauman by the Company to resolve this matter confirms that Bauman intended to, and willfully did, infringe Plaintiff's copyright.

FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT
(17 U.S.C. §§ 501, et. seq.)

40. Plaintiff repeats and incorporates by this reference the preceding paragraphs of this Complaint as if fully set forth herein.

41. Plaintiff is the sole owner of all right, title, and interest in the "Sad T Rex" design, and of the corresponding copyright and Certificate of Registration VA 1-882-368.

42. Defendants have infringed upon the Company's copyright in the "Sad T Rex" design by, at least copying, reproducing, displaying, using, advertising, marketing, offering, and/or distributing infringing materials, which incorporates the copyrighted work, or derivative thereof of the Certificate of Registration VA 1-882-368, in the United States of America and specifically in this Western District of New York without approval or authorization from the Company.

43. Defendants' infringement of the Certificate of Registration VA 1-882-368 has been knowing and willful.

44. As of result of their wrongful conduct, Defendants are liable to the Company for copyright infringement. 17 U.S.C. § 501. The Company has suffered damages. The Company is entitled to recover damages, which include any and all profits Defendants have made as a result of his wrongful conduct. 17 U.S.C. § 504.

Alternatively, the Company is entitled to statutory damages under 17 U.S.C. § 504(c).

45. In addition, for the reasons set forth above, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

46. Defendants' infringement of the Certificate of Registration VA 1-882-368 has damaged the Company in an amount that is unknown and cannot at the present time be fully ascertained.

47. The Company is also entitled to recover its attorneys' fees and costs of suit under 17 U.S.C. § 505.

SECOND CLAIM FOR RELIEF
ACCOUNTING

48. Plaintiff repeats and incorporates by this reference the preceding paragraphs of this Complaint as if fully set forth herein.

49. The Company is entitled, pursuant to 17 U.S.C. § 504, to recover any and all profits of Defendants that are attributable to his acts of infringement.

50. The Company is entitled, pursuant to 17 U.S.C. § 504, to actual damages or statutory damages sustained by virtue of Defendants acts of infringement.

51. The amount of money due from the Defendants to the Company is unknown to the Company and cannot be ascertained without a detailed accounting by the Defendants of the precise number of units of infringing material advertised, marketed, offered, distributed, or sold by the Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For a preliminary, and permanent injunction preventing Bauman, Better Than Pants, Funny Shirts, and Sad-T-Rex from further engaging in the unlawful conduct set forth in this Complaint;
2. For actual damages to be proven at trial;
3. If elected by Plaintiff, for the maximum statutory damages permitted under the Copyright Act;
4. For such other amounts as may be proper under 17 U.S.C. § 504;
5. For prejudgment interest;
6. For attorney's fees and costs incurred by Plaintiff in connection with this action; and
7. For such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: February 24, 2015

Respectfully submitted,

SMYTH NORA LLP

By: s/Edmund Smyth

Attorney for Plaintiff
Hold This, Inc.

Edmund Smyth
Smyth Nora LLP
143 Main Street
Huntington, New York 11743
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E-Mail: ESmyth@SmythNora.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

HOLD THIS, INC.

(b) County of Residence of First Listed Plaintiff **LOS ANGELES**

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

SMYTH NORA LLP

143 MAIN STREET, HUNTINGTON, NEW YORK 11743

(631) 271-7500

DEFENDANTSERIC BAUMAN, BETTER THAN PANTS, LLC, FUNNYSHIRTS.NET,
AND SADTREXSHIRT.COMCounty of Residence of First Listed Defendant **MONROE**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
17 U.S.C. §§ 501, et. seq.Brief description of cause:
COPYRIGHT INFRINGEMENT**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/24/2015

SIGNATURE OF ATTORNEY OF RECORD

S/EDMUND SMYTH

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Western District of New York

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Western District of New York

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Western District of New York

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Western District of New York

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: